

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MARK I. SOKOLOW, *et al.*,

Plaintiffs,

V.

THE PALESTINE LIBERATION ORGANIZATION,
et al.,

Defendants.

Docket No.
04-cv-397 (GBD) (RLE)

**DEFENDANTS' RESPONSE TO PLAINTIFFS' NOTICE OF NEW
SUPREME COURT AUTHORITY**

Plaintiffs recently filed a “Notice of New Supreme Court Authority,” DE 635, regarding the Supreme Court’s per curiam decision in *Johnson v. City of Shelby*, No. 13-1318 (Nov. 10, 2014). In *City of Shelby*, the Supreme Court held that “no heightened pleading rule requires plaintiffs seeking damages for violations of constitutional rights to invoke §1983 expressly in order to state a claim.” DE 635-1 at 1. The Court emphasized that its decisions in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), “are not [o]n point, for they concern the factual allegations a complaint must contain to survive a motion to dismiss.” *Id.*

In their Notice, Plaintiffs contend that *City of Shelby* rejects Defendants’ arguments that “plaintiffs are precluded from relying on provisions of law that are not specifically cited in their First Amended Complaint.” DE 635 at 1. Plaintiffs overlook that Defendants’ principal argument is that the First Amended Complaint failed to sufficiently allege facts that would support their claim that Defendants violated 18 U.S.C. § 2339B, among other statutes. *See* DE

497, Mem. at 19 (arguing that Plaintiffs' factual allegations were not sufficient); DE 619 at 1 ("Plaintiffs never alleged in their First Amended Complaint that Defendants provided material support to designated foreign terrorist organizations"). Defendants' argument is based on *Twombly* and *Iqbal*. It is not simply that the First Amended Complaint fails to expressly mention the statutes Plaintiffs now claim Defendants violated. Rather, the First Amended Complaint fails to allege with sufficient particularity facts that would support a claim for breach of those statutes. For example, as to 18 U.S.C. § 2339B, the First Amended Complaint does not provide any specific factual allegations regarding material support the Palestinian Authority or PLO allegedly provided to Hamas or the Al Aqsa Martyrs' Brigades. *See* First Amended Complaint ¶¶ 54-134. Thus, *City of Shelby* does not save the Plaintiffs' defective pleading.

November 14, 2014

Respectfully submitted,

/s/ Laura G. Ferguson

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 14th day of November, 2014, a true and genuine copy of the foregoing was filed by ECF, which automatically provided service to all ECF counsel of record.

/s/ Laura G. Ferguson
Laura G. Ferguson